

**TESTIMONY OF THE
NAVAJO AREA SCHOOL BOARD ASSOCIATION (NASBA)
On the 2nd Senate version of the
Proposed Amendments to P.L. 95-561 and P.L. 100-297
As They Relate to BIA Funded Schools
April 26, 2000**

Yaateeh, I am Angela Barney Nez, I am currently the Executive Director of the Navajo Area School Board Association (NASBA), the organization that was involved in the original development of P.L. 95-561 back in the mid 1970s. Most recently, NASBA has been actively involved in the development of a position concerning changes in P.L. 95-561 and P.L. 100-297 for the past two years. NASBA has participated with other entities on Navajo to develop a comprehensive position on these amendments. A position was developed prior to the bill being introduced in the House and an adjusted position was developed following the initial version from the Senate. The Navajo Nation has previously submitted these positions to the Congressional committees and NASBA supports these positions.

In our testimony today, we have three areas we wish to address: The role of school boards in the hiring of educators, educational standards, and the accountability issues.

1) The role of school boards in the hiring of educators (Section 1131 (f) - NASBA supports the current language of the statute which provides local BIA school boards with the decision making role at the local level, but subject to being appealed by the school supervisors (or principal) to the education line officer (school superintendent). The line officer can then overturn the school board for "good cause and in writing."

This language (the current law) is consistent with the role of a school board which has not elected to assume legal responsibility for the operation of its school under a grant or contract. When a school board elects to convert to a grant, it incorporates, it purchases liability insurance, and it has a considerable amount of additional funding to purchase legal advice, etc.

The proposed changes are unwise and unworkable. The new language would give ultimate authority to local boards that have elected to assume it. This is contrary to self-determination policy, which would not force any tribe or tribal organization into assuming responsibility they did not ask for.

2) Educational Standards (Section 1121) - The Navajo Nation has proposed language which would accomplish two important things. First, it would simplify the language so that people could understand it and, second, it would clarify and simplify the process by which a tribe could promulgate its own standards. We strongly urge the Committee to review the Navajo language and consider accepting it verbatim into the statute.

The proposed language makes few changes from the current law, which over the years has become difficult to comprehend and to some degree has been ignored. The new language would require the BIA to go through a lengthy standards development process even though standards already exist and have been on the books for about 20 years. Very few schools, if any, are currently accredited under the BIA and the BIA has never really developed an accreditation process. Therefore this requirement could well be a lot to do about nothing.

The current language and the proposed language also show great deference to state standards and only permit a tribe to set standards if they are "comparable to the standards of the state or region in which the school is

located." This section shows no confidence in the tribes ability to make critical decisions concerning education. It also presents a problem; i.e., Who decides if a given tribal standard is comparable to the state or regional standard?

Later sections provide waivers of the BIA standard so that the programs of a school will comply with state minimums and another provides a waiver and an opportunity for tribes to establish alternative standards to take "into account the specific needs of the tribe's children." These, however, are subject to rejection by the Secretary "for good cause." Decisions by the Secretary are not appealable. The proposed language is still confused and the ability of the tribe to establish its own standards is still uncertain. Section (f)(2) on page 9 then provides the local school board with the decision on which standards to follow, apparently without regard for any action of the tribe to set its own standards.

Again, the Navajo version, recognizing the difficulties involved with revising the current mess in the statute, rewrote and simplified the entire section. We believe it deserves another look.

3) Accountability - NASBA strongly supports the Navajo Nation position to require tribes that authorize grant or contract schools to develop systems and exercise oversight of their schools. This is consistent with tribal sovereignty and the inherent right of tribes to make key decisions related to the education of its children. The great majority of contract and grant schools do an admirable job of educating their students. For those that do not, there is no clear responsibility concerning whose responsibility it is to step in and do something. On Navajo, it has fallen on the Navajo Nation to step in to prevent the school from being reassumed by the BIA.

If tribes understand that they have a responsibility to ensure that their schools operate in compliance with applicable rules and laws, they will be more inclined to get involved before the school is "going down for the third time." If Congress requires tribes to be an active participant, it will be more apt to provide the long requested funding for tribal departments of education. If school boards know they do not have total authority to do whatever they want, they will be less inclined to take irresponsible actions. P.L. 100-297 has virtually eliminated any BIA role to get involved short of re-assumption due to gross mismanagement. The oversight role naturally transfers to the tribes and tribes should willingly accept it.

Tribes need some resources to go along with it. The ability to contract for oversight functions from BIA education line offices and to receive funding from the tribal departments of education line item are the obvious sources.

Earlier this school year, Senator Domenici from this and other influential committees sent a letter to Assistant Secretary Gover. He indicated that certain grant schools were misusing funds and demanded to know what the BIA was going to do about it. The BIA responded that its hands were tied due to the language of the law and recommended a change in the statute which would make tribes the only eligible grantees. NASBA does not support this change but recognizes the problem and has been actively searching for a workable solution. The language that follows is the Navajo Nation language which we **do** support:

Section 1121(h) - Indian tribes which operate Bureau funded schools, or which have authorized Indian organizations to operate Bureau funded schools shall, within eighteen months of the passage of this Act, develop and establish uniform fiscal and fund control standards and systems to ensure that the federal funds provided to the Indian tribes and tribal organizations are utilized in accord with applicable federal requirements, and for the education of the Indian students for which they are provided. Funds are authorized to be appropriated directly to Indian tribes for this purpose.

This testimony has dealt with only three provisions of the proposed statute and is incorporated in the Navajo Nation's position. We thank the Committee for the opportunity to testify. We will continue to work with the Committee's staff in our efforts to include more of the Navajo Nation's position into the final statute. Thank you very much.